SPRAGUE

SPEECH OF MR. SPRAGUE
OF MAIN

16.-

SPEECH

OF

MR. SPRAGUE,

OF MAINE:

DELIVERED IN

THE SENATE OF THE UNITED STATES,

16TH APRIL, 1830,

IN REPLY TO Messrs. WHITE, McKINLEY, AND FORSYTH,

UPON THE SUBJECT OF

THE REMOVAL OF THE INDIANS.

WASHINGTON:

PUBLISHED AT THE OFFICE OF THE NATIONAL JOURNAL.

PETER FORCE, PRINT.

1830.

SPEECH OF MR. SPRAGUE, OF MAINE.

IN THE SENATE OF THE UNITED STATES.
April 16, 1830.

The following amendment, to the bill for the removal of the Indians, being under consideration:

"*Provided always*, That until the said tribes or nations shall choose to remove, as by this act is contemplated, they shall be protected in their present possessions, and in the enjoyment of all their rights of territory and government, as heretofore exercised and enjoyed, from all interruptions and encroachments."

MR. SPRAGUE addressed the Senate, as follows:

MR. PRESIDENT:

The gentleman, who has just resumed his seat (Mr. FORSYTH,) has indulged in a wide range of remark in defence of his State against imputations which he supposed to have been elsewhere cast upon her. This course may have been very proper in him; I fully appreciate the motive which induced it. But I have no occasion to follow him; I have no wish to derogate in the least from the character of Georgia, but rather that it should be as elevated as her most devoted sons can desire. I shall speak of her so far only as may seem necessary to the free discussion of the subject before us.

This bill and amendment, and the discussion, which they have produced, involve the question of the rights and duties of the United States with respect to the Indian tribes generally, but more especially the Cherokees. With that people we have not less than fifteen treaties. The first made in the year 1785, and the last in 1819.

By several of these treaties, we have unequivocally guarantied to them that they shall forever enjoy—

1st. Their separate existence, as a political community;

2d. Undisturbed possession and full enjoyment of their lands, within certain boundaries, which are duly defined and fully described;

3d. The protection of the United States, against all interference with, or encroachments upon their rights by any people, state, or nation.

For these promises, on our part, we received ample consideration—

By the restoration and establishing of peace;

By large cessions of territory;

By the promise on their part to treat with no other state or nation; and other important stipulations.

These treaties were made with all the forms and solemnities which could give them force and efficacy; by Commissioners, duly appointed with full power; ratified by the Senate; confirmed by the President; and announced to the world, by his proclamation, as the binding compact of the nation, and the supreme law of the land.

The Cherokees now come to us, and say that their rights are in danger of invasion, from the States of Georgia and Alabama; and they ask if we will extend to them the protection we have promised, and perform the engagements we have made. This is the question which they distinctly propound, and which we must unequivocally answer; and we are now discussing what our response shall be.

There is a broad line of distinction between the claims of Georgia and those of Alabama and Mississippi, which seems heretofore to have been unobserved, but which I shall endeavour to keep in view.

Let us first inquire what our duties are with respect to Georgia; for if her pretensions are unfounded, those of Alabama and Mississippi fall of course.

It is not necessary to determine whether the Indians have just grounds for their apprehensions or not, because the question is, whether *if* the rights secured to them by our treaties, *should*, at some future day, be invaded we will perform our engagements?

But have they not some cause for their present alarm? In December, 1827, a Committee of the Legislature of Georgia, made a report accompanied by sundry resolutions which were accepted by both branches, and the resolutions also received the approval of the Governor. In the report we find the following language, respecting the territory of the Cherokees: "The lands in question *belong* to Georgia—she *must* and she *will* have them." And in the resolutions, the following:

Resolved, "That all the lands appropriated and unappropriated, "which lie within the conventional limits of Georgia, belong to her absolutely; that the title is in her; that the Indians are tenants at her will; "that she may at any time, she pleases, determine that tenancy by taking "possession of the premises, and Georgia has the right to extend her "own authority and laws over the whole territory."

"*Resolved*, That Georgia entertains for the General Government, so "high a regard, and is so solicitous to do no act that can disturb or tend "to disturb the public tranquillity, that she will not attempt to enforce "her rights by violence—until all other means of redress fail."

"*Resolved*, That to avoid a catastrophe which none would more sincerely deplore than ourselves, we make this solemn appeal to the "United States," &c.

It is thus asserted as the right and avowed as the determination of Georgia, to exercise absolute power over the Cherokees, and to take their land at all hazards—even by violence, if other means should fail.

The gentleman from that State, (Mr. Forsyth,) observed, in the commencement of his speech, that he felt himself bound in conscience to relieve his friend from New Jersey, from all apprehensions of a violation of the faith of the nation; by demonstrating that the claims of Georgia were supported by treaties. And he proceeded to do so in langauge so strong, and tones so triumphant, as to make an evident impression upon members of the Senate. Let us deliberately examine his argument.

The first treaty referred to, was that of Galphinton, in 1785, by which certain concessions were made to Georgia. But that was by the *Creeks*, and by them only, and had no relation to the Cherokees,—

(Mr. FORSYTH explained, he had remarked upon that treaty in answer to the gentleman from New Jersey, (Mr. Frelinghuysen,) and not as bearing upon the rights of the Cherokees.) Mr. SPRAGUE resumed; he was glad to receive the gentleman's explanation; it precluded the necessity of any further remark upon that topic.

The treaty next cited was that of Dewitt's corner, A. D. 1777, between South Carolina, Georgia and the Cherokees, by which the latter acknowledge that a portion of their country extending as far as the Unacaye mountain, had been conquered, and they made a cession of the same by defined boundaries, to South Carolina, and to her only. The conquered and ceded territory lies wholly within that State; and it is not now, and has not been for at least one generation, either claimed or occupied by the Indians. What right can that confer on Georgia to lands now owned and possessed by the Cherokees?

The next position was that the right of his State was derived under the 9th article of the treaty of Hopewell; made between the United States and the Cherokees, in November, 1785; by which they gave to the United States, the right of managing all their affairs. To this Georgia was no party. But the gentleman contends that the United States *transferred* all their power and claims, under the treaty, to that State, by virtue of the compact of 1802; and that we now cannot interfere with her pretensions. The clause in the compact, which is relied upon, is this—the United States "cede whatever claim, right or title, they may have to the jurisdiction or soil of any lands lying" within the limits of Georgia.

Does this relinquishment of the right of the United States, to the soil and jurisdiction of the *lands*, purport to transfer a pre-existing *treaty* with the Indians? Was it so intended?

And if it had been, is the power which the treaty confers to legislate for their benefit, in its nature transferable? The Article is in these words, "For the benefit and comfort of the Indians, and for the preven-"tion of injuries and oppressions on the part of the citizens or Indians, the "United States in Congress assembled, shall have the sole and exclusive "right of regulating the trade with the Indians, and managing all their "affairs in such manner as they think proper." The power given is strictly personal and fiduciary; to be exercised according to our judgment upon future events, and for their benefit. Can even a guardian transfer his rights and duties at pleasure? By the constitution—the fundamental compact—Georgia has given to the United States the right to legislate in certain cases over her citizens for their benefit, for example, to organize, arm, discipline and call forth her militia. Can the United States transfer this right to South Carolina, or any other Sovereign?

The express words of the article require this right to be exercised by the United States "*in Congress assembled.*" Can we without the consent of the other party, strike out these words and insert—the *Legislature of Georgia?*

Again—in order to see that this power is properly exercised, the 13th Article secures to the Cherokees, "the right to send a deputy of "their choice, whenever they think fit to *Congress.*" Shall he come here, to watch over the legislation at Milledgeville?

But, if this power was in its nature transferable, it must be so subject to the restrictions and limitations in the treaty contained. Among which are the following :—

1st. That the Cherokees shall continue to exist as a distinct political community, under the protection of the United States.

2d That they shall enjoy the undisturbed possession of their lands:

3d. That the power to manage "*their affairs*" shall be exercised "for the benefit and comfort of the Indians ; and for the prevention of "injuries and oppressions."

Did this give to the United States, the right to drive them from all their lands ?—Or to destroy the Cherokee nation, to strike it out of existence; and instead of managing for their "benefit," to annihilate "their affairs," as a body politic ? Or could we convey a greater right than we ourselves possessed ?

But this is not all. The Gentleman passed over in utter silence, a most important event which intervened between the treaty of Hopewell and the compact of 1802. It is the treaty of Holsten made in 1791 ; by which the United States again promised the Cherokees to protect them in their rights as a nation ; and the 7th Article holds the following language : "THE UNITED STATES SOLEMNLY GUARANTEE TO THE CHEROKEE NATION, ALL THEIR LANDS NOT HEREBY CEDED." If any right was transfered to Georgia, it would be such only as existed at the time, and subject of course to the stipulations of that pre-existing treaty.

There is still another view of this subject. Are we not bound to see that our treaties are fulfilled ? The Indians say that their very existence was threatened, and inquire of us whether we will perform our solemn promise of protection. What shall we answer ? That we have conveyed that promise to another !—that we have transferred our obligation to Georgia !—have given her a license to violate our treaties ! May they not reply, that the very purpose for which they purchased our guaranty, and the protection of the strong arm of our Government was to secure them against the encroachments of their white neighbors in that State ?

The compact of 1802, which has been so much insisted upon, was made between the United States and Georgia. The Cherokees were not parties, nor even assented to it. Of course it could not impair their rights, or confer upon others any claim against them. If I, Mr. President, should promise the gentleman that I would obtain your farm and convey it to him—would that divest your title, or authorize either of us to wrest it from you by force ? The compact itself expressly recognized "the Indian title," and the United States were to extinguish it only when it could be done "peaceably" and on "reasonable terms."

The gentleman having, as he supposed, fully sustained the treaty claims of Georgia, by the arguments upon which I have remarked, triumphantly *exclaimed*, "I will have my bond, I will have *my pound of flesh*."—A most unfortunate allusion, Sir; and one which I should not have been unkind enough to make. He will have his pound of quivering flesh taken from nearest the heart of the living man ! But he will take it without one drop of blood.—

——"Ay—there's the rub"
For, in the cutting of that pound of flesh
What human blood shall flow—"must give us pause."

The fiend-like Shylock himself could not take the penalty of his bond, because "no jot of blood" was given. And none is given here, but the express contrary—"peaceably"—"peaceably"—and "upon reasonable terms" too, is the emphatic language. But against whom, does the gentleman make his claim—the Indians? Does he hold their bond? No—they hold ours—they now present it to us and demand its performance—and, "till he can rail the seal from off that bond," he cannot absolve us from its obligations. He declares that he will have the terms of his compact fulfilled to "the twentieth part of one poor scruple," and to the division of a hair. So be it; and let the Indians too have their guarantied rights maintained with equal scrupulosity.

The Hon.Chairman of the Committtee on Indian Affairs (Mr.White,) conceded that the United States had repeatedly pledged their faith to the Cherokees to interfere for their protection, but contended that we ought not to perform these stipulations of our treaties because of the conflicting claims of Georgia. He laid down this proposition, that if the United States had come into engagements inconsistent with each other, so that it was impossible to keep both, that that which was prior, in point of time, should be specifically performed, and ample compensation be made for the breach of the other.

To this position I freely assent; and upon this basis will rest the argument.

It is incumbent then upon the Hon. Chairman to show in the first place, that our obligations to Georgia are *incompatible* with our treaties; and, in the next place that they are of *prior date*. This, he and two gentlemen who followed him in the debate (Messrs. M'Kinley and Forsyth) have attempted to do. Their argument is, that before the Revolution, Great Britain had jurisdiction over the aborigines and the sole right of treating with them, and that this power was wrested from her by *conquest* during the war, and forever abandoned by the treaty of peace in 1783.

I would first observe that, if it was obtained by conquest it belonged to the *conquerors*. And who were the conquerors? The United States; who were also a party to the treaty of peace. Upon this ground it was, that New Jersey, Delaware, Maryland, and other States so strongly insisted that the Crown lands, which had been acquired by the common arm and at the common expense, belonged of right to the common fund. Their demand to a great extent succeeded. The several States yielded to their pretensions by successive cessions; Virginia magnanimously taking the lead.

But, Mr. President, I shall not dwell upon this; for I mean, as far as possible, to avoid all debateable ground.

Concede then, for the present, that when Georgia became independent, in 1776, she at once succeeded to all the preexisting rights of Great Britain over the unmeasured forests within her chartered limits. What was that right? Gentlemen say it was the right of *discovery*.

Discovery, Sir, confers no claim or right against the *natives*—the persons *discovered*—but only as between *discoverers*. It is said that the rights derived from this source were established and defined in Europe, upon the first discovery of this country. True; but it was by the mutual understanding and agreement of the nations of that

continent only, in order to regulate their conduct among themselves. To prevent conflict and collision, it was tacitly agreed that the Sovereign, who should find a country, theretofore unknown, should have the exclusive right to the benefits of the discovery, and should be permitted without interference to conduct toward the aboriginal inhabitants according to his conscience, and his ability. He had therefore, as against discovering nations who had assented to the arrangement, a conventional right *to wage war upon and conquer the natives* and subject them to his sway. It is this right to which it is contended that Georgia succeeded upon the declaration of Independence. Let it be so considered; and that in the war which she should wage to subjugate theIndians, no other state or nation could rightfully interfere. But the people attacked had a right to resist. They surely were under no obligation to acquiesce in the proposed subjugation. Suppose then that they should happen to be too strong for their assailants ; that they should roll back the tide of war—the hunters should be hunted—that those who came to conquer, should be in danger of being conquered ; and, in such emergency, the people of Georgia should call upon another State, Virginia for example, for protection, and defence. Georgia would thus have waived her conventional right to exclude all others from her limits, and Virginia would, at her request, become a party to the war. Would not Virginia then have the right to make peace for the security of her own citizens, and must she not be bound by its terms ? Was France bound by her treaty of alliance with us during the revolution ? Yet her interference was without the consent of Great Britain, the discoverer. Are the United States now bound by their treaties with the states of South America ?

But further, what if Georgia, in order to induce her neighbours to come in for her defence, had expressly agreed, before-hand that Virginia should have the sole power of conducting the war, and concluding the peace. Would not both States be bound by the treaty of peace thereupon made by Virginia ? To proceed one step further, suppose that this arrangement between the two States, instead of being occasional should be established by a permanent compact ; and that, in order to obtain the aid and protection of Virginia, at all times, against the attacks of the Indians, Georgia should agree that she never would herself provoke such attacks by making war upon them, and that if it should arise, her more powerful ally should have the entire management of the war, and the exclusive right of agreeing upon the terms of peace and making the treaty.—Would not such terms be obligatory ?

Now, Sir, such a compact was actually made by Georgia with Virginia and eleven other States, by the Articles of Confederation.

By the third Article, the United States are bound to assist the several States, "against all force offered to, or attacks made upon them, or any of them." And by the ninth Article, the United States have "the sole and exclusive right and power of determining on *peace and war*, except in the cases mentioned in the 6th article," and also of "entering into treaties."

Here is the express grant. What answer can be given to it ? What reason can be assigned, why each State should not be bound by the stipulations of a treaty of peace ? Will it be said we could not have the re-

lations of war and peace with the Indian tribes? Ask the relatives of Braddock and Butler, of Wayne, Harmer, and St. Clair, if Indians can wage war? Consult the crimsoned pages of your history and they will answer you. Nay to banish such a suggestion forever, that same 9th Article of Confederation expressly declares, that by war it means to include contests with Indians; for, by reference, it incorporates into it the 6th article, which is in these words:

"Art. 6. No State shall engage in *any war* without the consent of the "United States, in Congress assembled, unless such State be actually in- "vaded by enemies, or shall have received certain advice of a resolu- "tion formed by some *nation of Indians* to invade such State, and the "danger is so imminent, as not to admit of a delay, till the United States, "in Congress assembled, can be consulted." Here is also an unequivocal relinquishment by each State, of the right to make war upon the natives.

During the revolution, war actually existed between the United States and the Cherokees; it continued to rage after the acknowledgment of our independence by Great Britain. Georgia needed our aid, and received it. The Indians were then powerful and terrific. The United States were desirous of peace; they sought it, and it was established in 1785, by the treaty of Hopewell, which has been already referred to. It secured to the Cherokees, their previous right to exist as a community, upon the territory in their previous possession. Such a treaty would have been obligatory upon any State, if the Articles of Confederation had never existed; but by that compact a right was expressly given by Georgia herself to make it, and the United States were in duty bound to exercise that power.

And now I ask what prior incompatible obligations to Georgia absolve us from its stipulations, or render it impossible to fulfil them?

Such was the power, and such the practice of the Confederation up to the time of the formation of our present constitution, in September, 1787. No longer previous than the preceding month, we find a Committee of Congress, in an able and elaborate report, declaring that the United States cannot interfere in behalf of a State against a tribe of Indians, "but "on the principle that Congress shall have the sole direction of the war "and *the settling of all the terms of peace with such Indian tribe.*" And this language was addressed particulary to Georgia by name, and with respect to the Indians within her limits. This was in August.

The Constitution was formed in the following September. The 6th Article declares, that "treaties *made*, or which shall be made under the "authority of the United States shall be the supreme law of the land"— "any thing in the constitution or laws of any State to the contrary not- "withstanding." This was an express confirmation of the treaty of Hopewell; which had been made in November, 1785, less than two years before, and was then in full force.

The State of Georgia, with full knowledge that it had been so made, and that it was considered by the United States, to be valid and obligatory, voluntarily adopted the Constitution, thereby herself most solemnly affirming and establishing that treaty; and, whatever may have been said before, never since that time, until recently, when the present controversy arose, has she in any manner denied its validity, or objected to its being carried into effect.

Such is the argument in support of the treaty of Hopewell. I shall leave it by adducing but one other proof of its validity, in the opinion of General Washington, and the Congress of 1778, and their determination to enforce it with scrupulous fidelity. It is the proclamation of Sept. 1, 1778, which declares it to be "the firm determination of Con-"gress to protect the said Cherokees in their rights, according to the "the true intent and meaning of the said treaty;" and a resolution was adopted to hold in readiness a sufficient number of troops to enforce that declaration.

Under our present Constitution many treaties have been regularly made with the Cherokees. The first was at Holsten in 1791. The reasons which have been adduced in support of the power to make the treaty of Hopewell are applicable to this with increased force.

The Constitution was formed because the Confederation was too weak to answer the purposes of the Union. It substituted a Government in place of a mere confederacy, conferring upon it additional powers, and further limiting those of the individual States. By the articles of Confederation, the power of Congress to regulate the trade and manage affairs with the Indians was subject to a proviso that "the legislative "right of any State within its own limits should not be infringed." This restriction is the only ground upon which doubts could ever have been suggested of the power of the Confederation to enter into treaty stipulations: it gave no countenance however to such suggestions, because it was a limitation upon another grant of power, distinct from that of establishing peace and making treaties. But even this restriction is omitted in the Constitution, and Congress are empowered to regulate commerce with the Indian tribes in unqualified terms.

The Constitution vests in the United States the sole and exclusive power of making war and conducting peace. It expressly provides "that no State shall engage in war" or "enter into any treaty." Here is an unequivocal relinquishment of the right of Georgia to make war upon or treat with the Indians. And what is the right which it is said devolved upon her as successor to the sovereignty of Great Britain? The right of a discoverer; that is, a right, as against others, and without their interposition, to attack, and by force subdue the natives; to make war for the purpose of conquest. But Georgia covenants, by our fundamental compact, not to engage in war for that or any other purpose; to attack no nation or political community.

The United States have the sole power of making *peace;* this can be done only by treaty. At Hopewell in 1785, we made a treaty of peace. Open war had raged between the United States and the Cherokees up to that time. They had been the allies of Great Britain, but never had been ours, or in any manner contracted with us. Was not that treaty rightfully made and obligatory?

At Holsten, in 1791, we made a treaty of *peace and friendship.*—It is so denominated on the face of it. It was the termination of an actually existing war; of this there is no doubt. The Chairman of the Committee of Indian affairs, in his written opinion of 1824, states the fact, that war was raging. The gentleman from Georgia says that his State applied to the United States for aid and protection in that war. The report of the Committee of Indian affairs now before us declares that the

Cherokees waged war against the citizens of the United States. At Holsten we then undeniably made a treaty of peace to terminate an existing war. The authority was express and exclusive. Are not the United States bound—will they abide by it?

The 1st article is—"There shall be *perpetual peace and friendship* "between all the citizens of the United States of America, and all the "individuals composing the whole Cherokee *nation* of Indians."

"Article 7th—*The United States solemnly guaranty to the Cherokee nation, all their lands not hereby ceded.*"

"Article 15th—All animosities for past grievances shall henceforth "cease, and the *contracting parties will carry the foregoing treaty into "full execution with all good faith and sincerity.*"

The question now is, shall we carry these articles into effect with any good faith or sincerity?

Will it be pretended that the United States might make peace, but had no authority to insert such stipulations as those I have quoted. Sir, the substance of these articles are of the essence of a treaty of peace. In every contract each party recognises the separate existence of the other; and a treaty of peace—not a truce, not an armistice, not a temporary cessation of hostilities, but a treaty of peace, in its nature a permanent, enduring contract, must bind each party to respect the existence of the other, and never to assail or attempt its destruction—must obligate each also to permit the other to continue that existence upon its own territory without attack or violence. To attempt to expel them by force, or subjugate or destroy their separate being, is a violation of the compact of peace, and a renewal of the war. In terminating hostilites therefore, by their undoubted constitutional power, the United States, not only rightfully, but of necessity, embraced such terms as these. Are they not obligatory? I am not contending, Mr. President, that the United States can cede away a part of any State to a foreign nation, as France or Great Britain, for example. That question, I do not mean to touch; it is wholly unnecessary. I only say that they may agree that the other party may continue to exist upon the lands which they have always occupied; may retain that which has ever been their own.

But this is not all. The Constitution proceeds still further and gives to the United States the general right to make *treaties*, not merely of peace, but all others. This power is not only clearly and positively conferred on the Union, but expressly inhibited to its several members. It has been repeatedly and continually exercised in relation to the Indian tribes within the United States, and that by the acquiescence and assent of Georgia herself.

I know it is said Georgia protested; and this has been repeated, reiterated and insisted upon in every variety of form, as applicable to both the treaties and all the questions which have been presented. Let us examine:

The first alleged protest was in Feb. 1786, prior to the treaty of Holsten. It is the report of a committee, accepted by *the House of Representatives only.* The objections urged therein apply exclusively to the treaty of Hopewell, and must have rested only on the ground of the reservation, before mentioned, in one of the Articles of Confederation and which was omitted in the Constitution.

The next protest was in Feb. 1797—It makes no objection whatever to the treaty of *Holsten*, and thereby impliedly approves and assents to it. It protests against two treaties with the *Creeks* made at New York, and Colerain, and the intercourse law of the United States. The grounds of objection insisted on are, that the intercourse law places the military above the civil authority, and prohibits pursuit and retaliation for Indian outrages. That the Creeks by the treaty of Galphinton in 1785, confirmed by a subsequent treaty at Shoulderbone, had submitted themselves to Georgia and become members of the State, and *ceded to her a tract of land which had been actually organised into a county* by the name of Tallassee. And the State protests "because the treaty of "New York in 1790, after the said cession being acted on constitu- "tionally erected and laid out in a county, and the lands appropriated, "*did sever, cut, and lop off the land so ceded* before the power of the fed- "eral constitution existed, and EX POST FACTO declared they were vest- "ed in, and belonging to, the Creek Nation of Indians; and because "the said intercourse law and treaty of Coleraine have confirmed the "same."

Their complaint is, substantially, that the United States had taken from Georgia, lands which had "been duly ceded, fairly paid for, "and legally and constitutionally laid out into a county." In conclusion, they "most fervently solicit a revision of the intercourse "law and the New York and Coleraine treaties, and requiring a con- "firmation of the county of Tallassee to the State." And "they most "earnestly solicit *the assistance of the United States to attain the cession* "*of land* the treaty of Coleraine they trust was intended to establish." These protestations insist that the treaties of Galphinton and Shoulderbone were valid by reason of the before-named reservation in the Articles of Confederation; but no where deny, and by implication admit, the general right of the United States to make treaties with the Indian tribes, and guaranty to them the possession of their lands.

They do not breathe a whisper of objection to the treaty of Holsten, of 1791, or to any of the powers involved in making it, but acquiesce therein.

In February, 1796, by an act of her Legislature, to which I shall hereafter recur, she expressly declared that the United States had the right to make treaties with the Indians; a right which they have continually exercised and which she has never questioned, until this recent controversy arose. Not less than fourteen treaties have been entered into with this same Cherokee Nation since the adoption of the Constitution: in 1791, 1792 and 1794, by General Washington; in 1798, by Mr. Adams; one in 1804, two in 1805, one in 1806, and one in 1807, by Mr. Jefferson; three in 1816, by Mr Madison; one in 1817, by Mr. Monroe—General Jackson being the negotiator; and in 1819, by the same President—Mr. Calhoun being the negotiator.

By more than half these treaties, large cessions of land were obtained, boundaries defined, and the remaining territory, and the protection of the United States again and again guarantied to the Indians.

Shall Georgia now be permitted to deny their validity? If a man seeing another in the act of making a deed of his land, to a third person, shall stand by in silence, until the conveyance is completed, and the

grantee has parted with his money, paid the consideration, would any Chancellor, that ever sat in a Court of Equity, permit that man to reclaim his property and thus consummate a fraud on the fair purchaser? But suppose that he shall not only thus witness the conveyance perfected and the money paid, but himself receive the consideration; can he with the fruits of the contract in his pocket, lay his hand upon the property, and wrest it from the innocent grantee? Georgia not only acquiesced but actually received all the lands ceded by the Indians, and for which they obtained our promise of protection. I have in my hand some of her laws disposing of the acquisitions.—

The title of one is:—"An act to dispose of and distribute the cession "of land obtained from the Creek and Cherokee nations of Indians by "the United States, in the several treaties of 10 August, 1814; 8 July, "1817; and 22 January, 1818."

And of another, "An act to dispose of the territory lately acquired "of the Cherokee Indians by a treaty held by the Honorable John C. "Calhoun, at the City of Washington, on the 27th day of February, "1819." There are others of similar tenor.

And now retaining these acquisitions, holding the proceeds of these treaties in her hands, she declares that they are invalid; thus at the same moment binding the Indians by their stipulations and denying them the benefit of ours.

She has not only thus declared the right of the United States, to make treaties and assented to them when made, but has repeatedly urged that they should be entered into for the purpose of obtaining further acquisitions for her benefit; and even as late as the year, 1825, contended that the treaty of the Indian Springs with the Creeks was obligatory, and should be carried into effect.

And it was not until the Indians had firmly refused to assent to further cessions, and it was perceived that no more lands could be acquired by negotiation, that the doctrine arose which denies to the United States, their right to make these compacts.

Mr. President: what have the Senate heard to obviate the force of the facts and arguments, which I have adduced? What answers have been given? I will advert to them all.

And first, as to the acts and acquiescence of Georgia, we have the reply in the report of the Committee, that as she protested against the treaty of Hopewell, made in 1785, "no inference can be drawn to her disadvan- "tage, from her *silence* or from any thing *she may have said in relation to* "*any subsequent treaty*, because in each of them a change was made, by "which a portion of her territory and jurisdiction was restored to her, "and thus her condition rendered better," &c. Who does not perceive that, under this form of words of *restoring*—what she never possessed; but which belonged to the Cherokees, before she had a being—the substantial, real cause of her assent is alleged to be the *benefits which she received*! Yes, Sir; she did receive the fruits of these solemn contracts; by the establishing of peace and additions to her territories, in 1791; by the cessions of 1798, 1804, 1805, 1806, 1807, 1816, 1817, and 1819. And shall we be told that because it was for her interest to be silent, *because* she was receiving the consideration of the compacts, therefore she now, after 20 years assent, is under no obligation to abide by them?

The Hon. Chairman, in his opening speech, assigned several reasons why the United States could not constitutionally form such treaties. The first was that "the creature could not possess power to destroy its creator." This expression is calculated to mislead the judgment, because it refers the mind at once to the relation, in which we frail and feeble mortals stand to our Omnipotent Maker; and it would seem to be just as true to say—the creature cannot diminish the power of its creator. The gentleman applies it to the General Government, as the work of the several States. Is it true that it cannot—that it does not take any power from its several members? The argument is, that if the Union can secure to the Indians, any portion of their territory by treaty, they may cede away a whole State. This would indeed, as the gentleman must admit, be a gross and palpable abuse of the authority. His reasoning then must be, that the United States cannot possess any power which, by perversion, may be exerted to the destruction of one of its members. Can they, then, make any treaty with a foreign nation? If so there is the same danger of wrongfully transferring a State. Can they make war? It would be the readiest means of lopping off a member by leaving it defenceless. Can they organize, discipline, and call forth the militia, and control the whole physical strength? Sir, these are powers expressly inserted in the Constitution, and they are not to be argued out of it, by apprehensions of extravagant possible abuses.

The General Government was formed by the States—and the creature, says the gentleman, cannot have power to destroy any one of its creators. The State Governments, Sir, were formed by individuals. If any of these should be guilty of a capital offence, might he not say in the language of the Chairman, you cannot take my life—it is impossible in the nature of things that the creature can have power to destroy one of its creators

It is argued that the existence of an Indian community, within the *chartered* limits of a State, is inconsistent with "*a Republican form of Government*," as guarantied, by the Constitution, to every State.

This argument has been much relied on. It was advanced by the Secretary of War, repeated by the Committee, and reiterated in the speech of the Chairman. If this be so, Mr. President, a most unexpected result follows; it is—*that Georgia has never yet had a republican form of Government*—for there has never been a moment, when such tribes did not exist within her borders. At the time of the adoption of the Constitution, this same Cherokee nation was much more numerous, and held sway over a much wider region than at the present time. Nay the Constitution itself confirms the pre-existing treaty of Hopewell, which recognised and guarantied the separate existence of the tribe; and which is now contended to be incompatible with that fundamental compact. Is the existence of a body politic, which the Legislature cannot destroy, necessarily incompatible with a Republican form of Government? How is it with Dartmouth College, in New Hampshire, or the chartered cities of other States?

Another proposition derived from the same elevated source, and urged with equal vehemence here, is that these treaties cannot be valid, because the Constitution declares that "no *new* State shall be formed or "erected within the jurisdiction of any other State, without the consent "of the Legislature" thereof.

Sir, no one proposes to create a *new* State, but to *continue* an *old* tribe, or State, if you so please to denominate it. It is to keep faith with a political community more ancient than Georgia herself; it is to *preserve*, not to form anew. Here again, I would observe that this nation of Cherokees was as much a State at the time of the adoption of the Constitution as now, and had much greater power, and more extensive dominion; and that the treaty of Hopewell, which, this argument insists, formed a *new State since* the Constitution, and in violation thereof, was made two years before its adoption, and was confirmed and sanctioned by it.

We are next told that the Constitution recognises the right of the respective State Legislatures to pass their laws over, and annihilate these communities, by that clause in the first article, which provides that an enumeration of inhabitants as a basis of representation shall be made, "excluding Indians not taxed."

This provision undoubtedly implies that there could be individual Indians subject to taxation, and therefore to be counted; it also expressly declares that there might be those within a State, "not taxed."

There may have been, nay there were, in some of the States, individual natives voluntarily residing within the white settlements, separate from any tribe, and freely subjecting themselves to the local laws. There were those too whose nation, as a body, had disappeared; and because these persons had, of their own accord, thus sought the State jurisdiction, does it follow that it could be extended over Indian nations, who had always resisted it, and with whom, at the moment this clause was written, and the Constitution formed, the United States had a treaty guaranteeing them against such taxation, and every other exercise of State authority over them? By what imaginable process could these words, "Indians not taxed," produce the magical effect of annulling the treaty of Hopewell, then existing in full force?

Let us substitute the word, *aliens*, for Indians. The clause would then exclude "aliens not taxed." Will it be contended that foreigners existing as a nation, with whom we had treaties, as such, would be subject to the laws of a State? Would it not apply exclusively to the aliens, who had separated themselves from their nation and mingled with our citizens?

As a last resort, and to me, Mr. President, it seems a desperate one, it has been earnestly contended by the gentlemen from Tennessee, Alabama, and Georgia, (Messrs. White, McKinley and Forsyth,) that we cannot constitutionally make ANY treaty, with any Indian nation, within the United States—that the express power to make "treaties" does not embrace compacts or agreements with such communities.

Wherever, Sir, the relation of peace and war can exist, the United States must of necessity, possess the right to make a treaty of peace. That this relation may exist with these native tribes has never yet been doubted, and will not at this day be questioned. No one will have the assurance, in the face of all history, in defiance of what is known by the whole world, to declare that our contests with the aboriginal nations are on their part insurrections, rebellions subjecting them to be tried and executed as traitors. The Secretary of War will not say so, for he told the Cherokees, in April last, "your people were at enmity with the "United States, and *waged a war* upon our frontier settlements; a

"durable *peace* was not entered into with you until 1791." The Committee and its Chairman (Mr. White) will not tell us so, for their report, accompanying this bill, declares that the Cherokees *waged* "*a war* "against the citizens of these States, prior to the treaty of Holsten, in "1791"—Rebellion!—by those who never owed allegiance, and with whom, ever since our national existence, we have either had open war or subsisting treaties!

But independent of this power of peace and war, why does not the general authority to make treaties, embrace those with the Indians? Gentlemen content themselves with a positive and earnest denial.

The word treaties, say they, in the Constitution does not mean compacts or contracts with Indian tribes. Why not? Did not those who formed and adopted the Constitution so understand it? To answer this question we must ascertain how that word was used, and what were the ideas attached to it, at the time and anterior to its insertion in that instrument. This rule of construction is the foundation of all science. When any term is used by an author it is understood to carry with it the ideas which he has previously affixed to it; that he denotes by it what he always has done. Hence, in the science of law, when the student has ascertained what a writer means by the words fee simple, or larceny, if he subsequently finds those words used by the same author he attaches to them the same meaning.

These contracts with aboriginal communities have been denominated *treaties* from the first settlement of this country. It has been their peculiar and appropriate name, without even an *alias dictus*. Great Britain made *treaties* with the Indians; the several colonies formed many, and gave them the same appellation. The Continental Congress from the time it first assembled, until it was merged in the present national Government, uniformly called them treaties. They did so in 1775, 1776, 1778, 1783, 1784, 1785, 1786, 1787, 1788, and even to the day of the formation and adoption of the Constitution. We find them repeatedly and particularly mentioned in July, August and October, 1787; the Constitution being formed in September of the same year.

Nor is this all. In the articles of Confederation, power was given to make treaties. It had been repeatedly exercised in establishing our relations with Indians tribes; particularly the Delawares, the Six Nations, the Cherokees, the Choctaws, the Chickasaws, and the Shawnees; and on the first of September, 1778, was issued the proclamation of Congress and of General Washington to enforce the treaty of Hopewell.

The word *treaties*, thus invariably known and used, and which had received a practical construction under the Confederation, was inserted by the same great men in the Constitution of the United States. Could any one doubt its meaning? Did Georgia misunderstand it? She had herself made *treaties* with all the forms of negotiation, through commissioners fully empowered, in 1773, 1783 and 1785, they were so denominated by her at the time and ever afterwards. On the 3d of August, 1787, a motion was made by Mr. Few, delegate in Congress, from Georgia, seconded by Mr. Blount from North Carolina, to take measures to "explain and confirm all former *treaties*" with the Creek Indians.

There is as much evidence that this word was intended to embrace conventions with such communities as the Creeks or Cherokees, as those with transatlantic nations, such as France and Spain.

Contemporary exposition has always been deemed of great force in settling even the most difficult questions of constitutional law. Practice and precedent too have often been considered as decisive authority. Mr. Madison, who has, with so much justice, been denominated the great constitutional lawyer of this country, declared in a message to Congress, that the question of the constitutionality of the Bank of the United States, had been so settled by the sanction of the different departments of the Government, that it was no longer to be agitated; and yet only one bank had then been chartered. If his argument had, in that instance, any force, it is here irresistible.

From the organization of the Government, down to this very session of Congress, the practice has been unbroken and invariable. We find these treaties made in 1789, 1790, 1791, 1792, 1794, 1795, 1796, 1797, 1798, and almost, if not quite, every year since. I have counted no less than one hundred and twenty-four Indian treaties formed under the present Constitution, being more than three for each year. If authority and practice can settle any question, this is at an end.

In 1790, General Washington delivered a speech to the Seneka Indians, some extracts from which I will now read :

I, the President of the United States by my *own mouth*, and by a written speech *signed with my own hand* and *sealed with the seal of the United States*, Speak to the Seneka nation.

The general Government only has the power to treat with the Indian nations, and any treaty formed and held without its authority, will not be binding.

Here then is the security for the remainder of your lands. No state nor person can purchase your lands, unless at some public treaty held under the authority of the United States. The General Government will never consent to your being defrauded ; but it will protect you in all your just rights.

Hear well, and let it be heard by every person in your nation, that the President of the United States declares, that the General Government considers itself bound to to protect you in all the lands secured to you by the treaty of Fort Stanwix, the 22d of October, 1784, excepting such parts as you may since have fairly sold to persons properly authorized to purchase of you.

Again—

But your great object seems to be the security of your remaining lands, and I have therefore upon this point meant to be sufficiently strong and clear.

That in future you cannot be defrauded of your lands. That *you possess the right to sell, and the right of refusing to sell your lands.*

That therefore the sale of your lands in future will depend entirely upon yourselves.

But that when you may find it for your interest, to sell any parts of your lands, the United States *must be present by their Agent, and will be your security*, that you shall not be defrauded in the bargain you shall make.

You now know that all the lands secured to you by the Treaty of Fort Stanwix, excepting such parts as you may since have fairly sold, are yours, and that only your own acts can convey them away. Speak therefore your wishes on the subject of tilling the ground. The United States will be happy to afford you every assistance in the only business which will add to your numbers and happiness.

The United States will be true and faithful to their engagements.

Given at Philadelphia, 29th December, 1790.

GEORGE WASHINGTON.

By the President:

THOMAS JEFFERSON.

By command of the President of the United States of America—

H. KNOX, *Secretary for the Department of War.*

"The United States will be true and faithful to their engagements." Such was the solemn declaration of the Father of his Country in the infancy of this Republic. Heaven grant that his sacred promises may be kept and his confident prediction verified. The question is now before us. No sophistry can evade, no ingenuity can elude it. Will "the "United States be true and faithful to their engagements," or false and treacherous?

The Cherokees present this solemn interrogatory, and we must return a deliberate response. It seems almost, as if their case had been formed for the purpose of determining whether it be possible to bind this nation by its plighted faith.

I have already referred to our repeated and reiterated engagements by the sages of the Revolution, in the Congress of 1785; by Washington and the constellation of brilliant names around him, in 1791, 1792, and 1794; by the elder Adams and his Cabinet in 1798; by Mr. Jefferson, in four successive treaties, in 1804, 1805, 1806, and 1807; by Mr. Madison, in several formed in 1816; by Mr. Monroe, in 1817, General Jackson himself subscribing it with his own hand as commissioner; and by another in 1819, to which Mr. Calhoun affixed his name, as negotiator. All these treaties were ratified by the Senate, and sanctioned by every department of the Government.

In 1794, that greatest and best of men, whose name we profess so much to venerate, and which should be, of all others, the highest authority to this Senate and to the nation, delivered a speech to the Chiefs and Warriors of the Cherokee nation, in which speaking of the lands upon Cumberland, he says: "These have been confirmed by two trea- "ties of Hopewell, in 1785, and Holsten in 1791" Again—"The trea- "ties which have been made cannot be altered. The boundaries "which have been mentioned must be marked and established, so "that no dispute shall happen or *any white people cross over it.*"

In 1795, the Governor of Tennessee upon which State it is now asserted these treaties are not obligatory, wrote a letter to President Washington, in order to "prevent infractions of them," by encroachments upon the lands of the Indians. And as late as 1824, the Gentleman from Tennessee, who reported this bill, (Mr. White) gave an able and elaborate opinion in writing, in which he strenuously asserts and maintains their validity and the rights of the Indians. He says "the Cherokees "are to be considered as a nation, a community having a country dis- "tinctly marked out, and set apart for their use; that their interest is "as permanent and fixed in it, as the *pledge* and the *faith* of the United "States can make it; inasmuch as they have solemnly guarantied it to "them as a nation, without any limitation of time." With reference to the treaty of Holsten, he says they are "to be viewed as a nation pos- "sessing all the powers of other independent nations, which are not ex- "pressly or by necessary implication, surrendered up by that treaty." And again, "they have not surrendered the power of making municipal regulations for their own internal government."

But now that we, the United States, are called upon to "be true and faithful to these engagements," it is contended that they are not obligatory; and, in order to sustain that position, it is insisted that the Constitution gives no power to make treaties with Indian nations, within the

United States. Although, every President of the United States and the members of his Cabinet, every Administration and all the great men by whom it was surrounded and sustained, have formed and established such Indian treaties.

Every Senate of the United States, and I believe, every member of every Senate have ratified and confirmed such Indian treaties. Every House of Representatives of the United States, and I believe, every member thereof, have affirmed and sanctioned them, by passing laws for their due execution, paying from year to year the annuities secured by them, and making appropriations to enable the President to hold others. At this very session, the Senate has ratified new treaties; and during the present month, we have made an appropriation to enable the President to form another, with the tribes in Indiana. While that bill was under discussion an amendment was proposed, prohibiting the use of any part of the money therein granted, in *secret* presents to the Chiefs; and it was insisted by the gentlemen from Tennessee, Louisiana, and Illinois, (Messrs. Grundy, Livingston, and Kane) that such a proviso, merely restricting the use of money which Congress was granting, would trench upon the high, independent, constitutional power of the President in negotiating treaties. Nay, the second section of *the bill now under consideration*, provides for the removal of "any tribe or nation of Indians, now residing within the limits of any of the States or territories, and with which the United States have existing treaties,"—and now we are told, by the chairman, that such treaties cannot exist—that they are no *treaties*.

It is in effect asserted, that every President and every Senate, have been guilty of usurpation, in extending the treaty-making power beyond its legitimate objects. For if these contracts are not treaties, within the true meaning of the constitution, they could be made only by the authority of *Congress*. But the President and Senate alone—the treaty-making power—have always negotiated them, ratified them, and by proclamation announced them to the nation, as the supreme law of the land. Every State legislature, and the whole people, have heard these annunciations, and looked on, during all these proceedings, in silent acquiescence.

Even in 1798, when all the acts of the General Government, and particularly those of the executive, were scrutinized with the utmost rigour, it was never suggested even in Virginia, where the discussions were most animated, that there had, in this respect, been any irregularity. But now, upon the pressure of an exigency, it is discovered for the first time, that all has been wrong. The present occasion has brought with it new and peculiar lights, by which gentlemen now perceive what was in the minds and intentions of the framers of the Constitution, better than they did themselves. They were ignorant of their own work.—The venerated fathers of the Republic, and all the high and honoured names, who have presided over its destinies, have been involved in deep darkness, and wandered in gross error!

I have thus, Mr. President, endeavoured to present my views with respect to the claims of the State of Georgia. Whether we regard original principles of international law, as applicable to the right of discovery—or the express powers conferred by the articles of Confederation—or

the confirmation of pre-existing treaties, by the adoption of the Constitution—or the authority vested by that instrument in the General Government; and the renunciation of powers by respective States—the invariable practice and usage of the Union, and the acts, acquiescence, and assent of Georgia herself—it is manifest that we are bound to perform our engagements to the Indians, and are under no incompatible and paramount obligations to that State.

But let us now, for the sake of the argument, make the violent supposition, that the pretensions of Georgia are well founded, and that the United States cannot rightfully fulfil their stipulations as against her. In that case the States of Alabama and Mississippi, would stand on very different ground. Their claims have been mingled and blended with those of the elder sister, as if they were precisely the same, and hers have been put forward as the only subjects of discussion, when in truth there is a broad line of distinction, which ought to be marked and remembered. For the sake of distinctness and brevity, I shall speak of Alabama alone.

It is conceded on all hands, as a fundamental proposition, that the United States are bound to fulfil their engagements to the Cherokees specifically, except when prevented by incompatible obligations, *prior in point of time.*

Now, Sir, the State of Alabama did not exist until the year 1819; when she voluntarily came into the Union after the fifteen treaties with this nation, had been previously established and proclaimed as the supreme law of the land.

But it is said that Alabama was formed from territory once belonging to Georgia, and succeeded to all her rights. Without stopping to examine the difficulties attending such a supposed transmission of a right to resist treaties; it is sufficient to say that by the compact of 1802, Georgia ceded to the United States all her "right, title, and claim" "to the jurisdiction and soil" of all the territory now constituting Alabama and Mississippi. The whole right of Georgia, whatever it was, thus became vested in the General Government, and so remained until 1819; during which time not less than eight of these treaties were made. Who could then contest their validity? Are our treaties valid with the nations in Florida, Arkansas and Michigan? Can we enter into engagements with any tribes within the boundaries of the United States, —even beyond the Rocky Mountains, or any where upon this continent? Can we make the solemn guarantee proposed by this bill?—if so, we are legally constrained by our promises to the Indians of Alabama made before the existence of that State.

But this is not all. Still another insuperable difficulty presents itself to her claims to legislate over and destroy the Indian nations.

The following Article is a part of the fundamental law to which Alabama owes her being, and without which she cannot exist: "The utmost "*good faith* shall always be observed towards the Indians; *their lands* "*and property* shall never be taken from them without their consent: "and in their *property*, *rights*, and *liberty*, they never shall be *invaded* "or *disturbed*, unless in just and lawful *wars authorized by Congress*; "but *laws founded in justice and humanity shall, from time to time* "*be made for preventing wrongs being done to them, and for preserving* "*peace and friendship with them.*" This was originally a part of the 4th

Article of the Ordinance respecting the North Western Territory, and was by express reference incorporated into the 1st article of the compact of 1802, and made a fundamental and perpetual condition in the Act of Congress which provided for the admission of Alabama.

What is the answer to all this? We have it from the gentleman from Alabama (Mr. M'Kinley.) The compact of 1802, says he, was unconstitutional; Georgia could not transfer to the United States either soil or jurisdiction.

If this be so, the first consequence is, that the dispute between that State and the General Government, respecting the ownership of the crown lands obtained by conquest, which that compact was supposed to have happily put to rest forever, by mutual and reciprocal cessions—could never be settled!

In the next place—that the combined powers of the State and of the Union, cannot do that, under the constitution, which the members individually, might have done without the constitution. It is an attribute of complete sovereignty to be able to convey and receive territory. It is insisted that this attribute, as between the States, is annihilated—although all powers not granted are reserved to the members. I will not say that such an effect could not be produced by the Constitution, but it is at least so extremely improbable, that those who contend for it, in any particular instance, should be required to show it clearly, which has not been done.

It is insisted by the gentleman that no State can be subject to the restraining condition of the Ordinance referred to, because it is inconsistent with her constitutional equality with the other members of the Union.

That Ordinance was established in July, 1787. It declares that, "The following articles shall be considered as articles of compact, be-"tween the original States, and the people and states of said territory, and "forever remain unalterable, unless by common consent." Then succeeds an article embracing the clause before read and which was incorporated into the compact of 1802. The Ordinance subsequently declares that, "The said Territory, and the *States*, which may be formed therein "shall forever remain a part of this Confederacy."

This Ordinance and all its provisions was affirmed and established by the adoption of the Constitution, and thus that instrument itself contemplated that all the States, to be thereafter formed North West of the Ohio, should be forever subject to those conditions; by which it is now contended, no one could ever be constitutionally restrained!

It is insisted by the gentleman from Alabama (Mr. M'Kinley) that Georgia could not transfer soil and jurisdiction to the United States; that the compact of 1802, attempting to do so was unconstitutional and void; and that the tract of country, which it was intended to convey, remained a part of that State until the year 1819.

If the Gentleman's doctrine is correct, it remains so still; she having never conveyed it.

Another consequence, Mr. President, would flow from this doctrine, which I should exceedingly deplore; it is, Sir, that *Alabama is not a member of this Union!* By the Constitution no new State can be formed or admitted into the Union within the limits of an old one, without the consent

of the latter. Now, Sir, Georgia has never consented to the admission of Alabama, except by the transfer of soil and jurisdiction by virtue of the compact of 1802. If that conveyance was inoperative no consent has been given. If that compact was absolutely void, as the gentleman contends, it is a legal nullity, and he can hold no rights under it.

Congress, too, have never given their consent, except upon the basis of the binding efficacy of that compact, and upon the express condition that its requisitions should be the fundamental law of the new State. But, says the gentleman, Congress had no power to pass such a law. If so, the Act respecting the admission of Alabama was unconstitutional and void, and neither created nor admitted any new State.

The ingenious gentleman has reasoned so profoundly upon constitutional law that he has argued himself and his colleague out of their seats in this Senate!—Now, Sir, against this, I most seriously protest—they cannot be spared—we need the aid of their talents and experience.

How will the gentleman escape from the consequences which I have deduced? Will he contend that the compact and the law were valid and invalid at the same time? That they conferred rights but could not impose obligations upon his State? Even if such an extraordinary position were assumed—how would it affect the present question? If he can infuse any degree of vitality into that which was dead before its birth, if he can make that compact efficacious as the consent of Georgia to Alabama's becoming a State, would it not also be effectual as her consent that the United States should exercise jurisdiction over the territory so far as to make treaties with the Indian tribes? If then the gentleman will admit that Georgia assented to any thing, by virtue of that compact, she consented to the formation of these treaties, and thus they were valid by her authority before Alabama was brought into being.

As a dernier resort, the gentleman insists that the true construction of the language of the Ordinance gives all the right over the Indians for which his State contends, because the latter clause requires that "laws" —"shall from time to time be made for *preventing wrongs being done to* "*them*, and for preserving peace and friendship with them."

That is, laws restraining the whites, our own citizens, from encroaching upon the natives and thereby endangering the public tranquillity. If Maine or New York should pass laws for "preventing wrongs be-"ing done to" the Canadians, "and for preserving peace and friendship "with them"—would that give jurisdiction over the British provinces? But let us read the whole clause, the true construction of which confers this unlimited power.

"The utmost good faith shall always be observed toward the Indians;" —which means that we may violate all our engagements at pleasure!— "their lands and property shall never be taken from them without "their consent;"—that is, both may be taken by violence against their utmost resistance!—"in their property, rights, and liberty they shall "never be invaded or disturbed unless in just and lawful wars authori-"zed by Congress." There shall be laws for "preventing wrongs being "done to them and for preserving peace and friendship with them;"—the *true construction* of all which is—that a State may make war upon them at pleasure—deprive them of their lands—and annihilate their nation! To such arguments are gentlemen of great ability compelled to resort!

The rights of the natives, both natural and conventional have been strenuously denied. What right it is asked have the Indians to the lands they occupy? I ask, in reply, what right have the English or the French, the Spaniard or the Russian to the countries they inhabit?

But it is insisted that the original claim of the natives has been divested by the superior right of DISCOVERY.

I have already shown that this gives no ground of claim as against the discovered, that it is a mutual understanding or conventional arrangement entered into, by the nations of Europe, amongst themselves, to define and regulate their respective claims as discoverers in order to prevent interference and contests with each other, all agreeing that the sovereign who should first find a new country should be left without interference from them to deal with it and its inhabitants, according to his ability and his conscience.

But, we are told, that *grants* from the king are the highest title, and have always been relied upon as such. True—as against other grantees from the crown, or against the government itself; but not as to the natives. If such a title gives any just claim as against them, then they are bound to yield to it: for to every right appertains a corresponding obligation.

Were the aborigines bound to yield to such pretensions? Suppose that, more than two centuries ago, when in unbroken strength they held resistless sway over this whole western world, a royal patentee, with his handful of followers, just landed on these shores, should have found himself in the midst of a powerful Indian nation—the council fire is lighted up, and sachems and warriors are assembled around it—he presents himself, and says to them—

"This country is no longer yours. You must leave the forests where you hunt, and the valleys where you live. All the land which you can see from the highest mountain is mine. It has been given me by the king of the white men across the waters. Here is his grant—how can you resist so fair a title?"

If they deigned any other reply than the war-whoop, their chief might say—

"The GREAT SPIRIT, who causeth the trees to rise from the ground toward the Heavens, and maketh the rivers to descend from the mountains to the valleys—who created the earth itself, and made both the red man and the white man to dwell thereon—gave this land to us and to our ancestors. You say you have a grant from your king beyond the waters—we have a grant from the King of kings, who reigns in Heaven—by this title our fathers have held it for uncounted generations, and by this title their sons will defend it."

It has been strenuously argued that the overflowing nations of Europe had a just claim to the occupancy of some portion of the vacant lands of the aborigines for their own subsistence.

The excessive population of China, and of Holland, have, at this day, the same ground of claim against the United States. May they, therefore, drive us even from our cities and villages, and take all our territory by force?—We permit them to come and possess, if they submit to our laws and pay us for the soil. The Indians have been more liberal, having ceded both soil and sovereignty to hundreds of millions of

acres. The Cherokees have no more to spare; they need the residue for themselves. Shall they be permitted to retain it? That is now the question.

To avoid, as far as possible, all questionable ground, I at present contend only that the Indians have a right to exist as a community, and to possess some spot of earth upon which to sustain that existence. That spot is their native land. If they have no claim there, they have no right any where. Georgia asserts that the lands belong to her—she must, and she will have them—even by violence, if other means fail. This is a declaration of a right to drive the Cherokees from the face of the earth; for if she is not bound to permit them to remain, no nation or people are bound to receive them. To that for which I now contend, the Indians possess not only a natural, but also a legal and conventional right. These two grounds of claim have been blended and confounded.

The rights which the United States have claimed with respect to the territory of the aborigines, have been two-fold; pre-emptive and reversionary—A right to purchase, to the exclusion of all others—And to succeed the natives, should they voluntarily leave the country or become extinct.

It will at once be perceived that this is a right to exclude others from interference, but not to coerce the Indians. It leaves to them the perpetual undisturbed occupancy. They cannot indeed transfer their country to others—but this does not impair their *title*, although it may diminish its value in the market. It still belongs to them and their heirs forever. If a State should, by law, prohibit its citizens from making sale of their lands without the assent of the Executive—would it destroy every man's title? Nay, the laws do now prevent conveyances to aliens.

The right claimed is merely to exclude all others from purchasing of the aborigines. It will be divested of much of its appearance of harshness toward them by recurring to its origin. It was the primitive agreement or mutual understanding between exploring nations, that whichever should first find a new country, should alone possess the privilege of dealing with the natives; and upon this ground the discoverer excluded others from becoming purchasers. He had the right of pre-emption. This agreement trenched not upon the title of the aborigines; and as to its affecting the value of their lands, by preventing competition in the purchase, there would have been no purchaser but for the discovery.

There is no mystery in the international law of discovery. So far as it relates to this subject, it is the same as if five or six persons, being about to go in search of sugar lands in South America, should mutually engage that they would not interfere with each other in their purchases. Such agreement would do no wrong to the original owner.

The reversionary claim, as it may be denominated—although in strictness that cannot revert to another, which always belonged to the present possessor—is the necessary consequence of the exclusion of others from purchasing. It is merely a right of succession to lands of the Indians when they shall have become extinct, or have voluntarily abandoned them by emigration; as the property of individuals sometimes escheats to the government for the want of heirs.

The right of the Aborigines, to the perpetual and exclusive occupancy of all their lands, has been always recognised and affirmed by the United States. It was respected by Great Britain before the revolution; as appears by the royal proclamation of 1763, in which all persons are commanded "forthwith to remove themselves" from lands, "which not "having been ceded to or purchased by us, are still reserved to the "said Indians :" and after reciting that individuals had practised fraud upon the the natives, forbids private persons from making purchases, "to the end that the Indians may be convinced of our justice" and provides that if "the said Indians should be inclined to dispose of the "said lands the same shall be purchased only for us, in our name at "some public meeting or assembly of the said Indians, to be held for "that purpose."

That right was recognised by the *Confederation;* as appears by the whole tenor of their proceedings ; particularly their treaties, by which they purchased a part and guarantied the remainder ; by the report of a Committee in August 1787, which declares that the Indians have "just claims to all occupied by and not purchased of them"—and the proclamation of Congress in September 1788, which has been already referred to.

That, under our present Constitution, the rights of the natives and the relation in which they stand to the United States are such as I have described; is clearly manifested—by the Speech of President Washington to the Senakas in 1790, from which I have already presented some extracts—and by the following explicit and deliberate letter of Mr Jefferson, written to the Secretary of War in 1791—"I am of opinion that "Government should firmly maintain this ground ; that the Indians have a "right to the occupation of their lands, independent of the States within "whose chartered lires they happen to be ; that until they cede them by "treaty or other transactions equivalent to a treaty, no act of a State can "give a right to such lands; that neither under the present Constitution, "nor the ancient Confederation, had any State, or persons, a right to "treat with the Indians, without the consent of the General Government; "that that consent has never been given to any treaty for the cession of "the lands in question ; that the government is determined to exert *all* "*its energy for the patronage and protection of the rights of the Indians*, "and the preservation of peace between the United States them ; and "that if any settlements are made on lands not ceded by them, without "the previous consent of the United States, the government will think "itself bound, not only to declare to the Indians that such settlements "*are without the authority or protection of the United States, but to re-*"*move them also by the public force.*"—Also, by the intercourse law of 1790—forbidding all encroachments by citizens of the United States, upon the "territory belonging to any tribe or nation of Indians ;"—by many other statutes, particulary that of March, 1805—by all the treaties of purchase and cession—all the laws to carry them into effect and pay the consideration—and all the acts for enabling the Executive to "extinguish Indian titles."

The Gentleman from Georgia (Mr Forsyth) has referred to the Correspondence at Ghent to sustain his denial of rights to the Indian tribes. He relied upon the views of the American commissioners in repelling

the claims of the British. As it is sometimes more satisfactory to read for ourselves, than to take the construction of others; permit me, Sir, to present to you an extract from that correspondence. "Under this "system the Indians residing within the United States are so far inde- "pendent that they live under their own customs, and not under the laws "of the United States, that their rights upon the lands where they in- "habit, or hunt are secured to them by boundaries defined in amicable "treaties between the United States and themselves—and when these "boundaries are varied it is also by amicable and voluntary treaties by "which they receive from the United States ample compensation for "every right they have to the lands ceded." "Such is the relation be- "tween them and the United States: that relation is not now created "for the first time nor did it originate with the treaty of Grenville." And subsequently, "the treaty of Grenville was merely declaratory of "the public law—on principles previously and universally recognised.

To this, Sir, was subscribed the names of Adams and Gallatin, of Clay and Bayard and Russell.

The Gentleman from Alabama (Mr. M'Kinley,) to show that the natives had no title to the soil, cited the case of Johnson and McIntosh, decided by the Supreme Court of the United States, and reported in the 8th of Wheaton.

To see how precisely that case sustains my positions, let me read a few very short extracts from the opinion of the Court as delivered by Chief Justice Marshall. It declares that the right of the United States, or the several States, is "subject to the Indian right of occupancy." "That, the original inhabitants are the rightful occupants of the soil, "*with a legal as well as a just claim to retain possession of it, and to use* "*it according to their own discretion.*" And again, "it has *never been* "*contended* that the Indian title amounted to nothing. Their right of "possession has *never been questioned.*"

Georgia herself has recognised those established rights of the natives, and the relation they bear to the General Government.

By a law, passed in 1796, respecting the vacant lands within her chartered limits, she held the following language: "the territory therein "mentioned is hereby declared to be the sole property of the State, *sub-* "*ject only* to *the right of treaty* of the United States, to *enable* the State "to *purchase* under its pre-emption right the *Indian title* to the same."—A most pregnant act of legislation. It expressly admits "the Indian "title"—that the claim of the State is only "to purchase" under its pre-emption "right"—that even this she could not do, unless "enabled" by the United States—that the United States had "the right of treaty" with the Indians; and that the claims of Georgia were "subject to" that right.

In the compact of 1802, she stipulated, by reference to an Article of the Ordinance before mentioned, for the inviolability of the lands, property, rights and liberty of the Indians, upon the territory relinquished: and recognised their just claim to lands, in that which was retained, by the Article which binds the United States "at their own expense" to extinguish the "*Indian title*" thereto, as early as it could be done "peaceably and upon reasonable terms."

The titles of the Acts which I read, and several others, speak of the lands therein disposed of as "acquired," "obtained" from the "Creek and Cherokee nations," by the treaties held by the United States

Even the Act of December last contains a plenary admission that the lands in question were never before subject to her jurisdiction A part of the title is "to extend the laws of this State over"—"the territory "now occupied by the Cherokees." The 6th section expressly *extends* the laws of the State over the same and the inhabitants thereof. Sir, does not the legislation of every State, of itself, operate upon all the country within its jurisdiction? The laws of Georgia were not before limited to any parts of the State; they were general—they covered the whole; and, are now—*extended* over the residue!

We have heard a great deal in this debate of the rights of CONQUEST; and are told that it is always recognised as valid by the judicial tribunals. True, Sir, by those of the *conqueror*. How can they do otherwise? Suppose that Congress, should now declare a war for the sole purpose of wresting Canada from Great Britain, and should succeed; could our own courts question this exercise of political power, and refuse to sustain our jurisdiction over the country, however iniquitous the acquisition? And if in this Government, where the political sovereign is under the restraints of the Constitution, the courts cannot interfere, how could they in Europe, where this doctrine had its origin? There the legislative and political powers are unlimited. Even in England the parliament is legally omnipotent; and who ever heard of a judicial court undertaking to annul any of its enactments?

Whatever may be the acquiescence of other nations in the exercise of power by a conqueror; it is no ground of just claim as against the the *conquered*.—They surely are not bound to submit, if new means of resistance can be found.

To give to conquest—to mere force—the name of right, is to sanction all the enormities of avarice and ambition. Alexander and Bonaparte are justified!—Britain has done no wrong, in sweeping India with the hand of rapine, and holding fifty millions of people in thraldom! All the cruelties of the Spaniards in South America—the crimes of Pizarro and Cortez—tracking the fugitive natives in terror and dismay with blood hounds to the caves of the mountains; and stretching their wretched monarch upon burning coals to extort from him the secret of his treasures—are sanctified by the name of right! This right of conquest gentlemen contend is the legitimate offspring of the right of discovery. Sir, the pirates on the coast of Barbary and at Barataria exercise both. They find a ship alone upon the ocean—this is *discovery*. They capture her and murder or enslave the crew—this is *conquest*. Both these *rights* are thus combined and consummated; and their validity will not, I presume, be questioned either by the *courts* of Barataria, or other bands of *similar conquerors*.

But even this miserable argument of conquest is not applicable to the Cherokees. They were not subjugated. The Southern Indians had sixteen thousand warriors, with arms in their hands. They were powerful; their trade was war; they did not solicit peace. We sought for it, as appears by the resolutions of Congress, of May, 1783—and March, 1785. We obtained the treaty of Hopewell in which gentlemen find

the expressions, the "United States give peace" to the Indians, and "allot boundaries:" and, by a philological criticism, upon the English terms, which we used, they logically deduce the rights of conquest! What did the unlettered Indian, understand by those expressions, but that there was to be an end of war; and that his territory was to be sacred? The treaty contains many reciprocal stipulations of the "contracting parties." Will it still be contended that we are not bound by them because the other party was *conquered*—in other words because we were the strongest? If the United States made terms of peace should they not abide by them? If a besieged town capitulates, are not the articles of capitulation obligatory? When Bonaparte dictated treaties of peace in the capitols of the nations which he had over-run—was he not morally bound to observe them? They indeed might complain that the contract was made by constraint when they were not free agents; but who ever heard of the stronger party claiming to be absolved from his engagements, because the other was subject to his coercion?

It has been repeatedly aksed, why not leave the Indians to the legislation of the State?

I answer, because they protest against it, and they alone have the right to judge. They demand of us the protection, which we solemnly promised.

Much has been said of their being untutored savages, as if that could dissolve our treaties! No one pretends, that they are less cultivated now than when those treaties were made. Indeed, it is certain, that they have greatly advanced in civilization; we see it, in the very proofs introduced by the gentleman from Georgia, to show their barbarism. He produced to the Senate, a printed code of Cherokee laws; and a newspaper issued from a Cherokee press! Is there another instance of such productions from any Indian nation? I was surprised, that with all his scrutiny, he could find no more remnants of savage customs. I shall not dwell upon his selections from their laws. The first was; that if a horse should be stolen; and the owner, finding the thief in possession, should immediately kill him, in the excess of passion—it should rest upon his own conscience. It is to be observed that the person slain must have been guilty; and for such an offence, life is now taken by the laws of England. But this provision inserted in the Cherokee code, more than twenty years ago, has yielded to further light, and been since repealed. Time will not permit me to dwell upon their advances in the arts of civilized life. It is known to have been great. They till the ground, manufacture for themselves, have work-shops, a printing press, schools, churches, and a regularly organized Government. Indeed, the gentleman from Tennessee, himself, told us that some individuals of that nation were qualified for seats in this august assembly.

What danger, it is asked, have the Indians to apprehend from the laws of the State?

What danger? Is it not here avowed, that their presence is a nuisance, from which Georgia wishes to be relieved? Has not her legislature declared, that she is determined to have their lands at all hazards, even by violence, in the last resort? And, if left to her unrestrained power, can it be doubted that she will find the means of carrying that

determination into effect? If the laws heretofore enacted, are not sufficient, may not others be resorted to? Let us, for a moment, look at the measures already adopted, and see if they have not some adaptation to the accomplishment of her wishes.

By the 9th section of the Act of 1828, no Indian in the Creek or Cherokee nations, can be a party or a witness in any suit, to which a white man may be a party. It is said that this has beenrepealed by the statute of 1829. I think otherwise. The latter contains no repealing clause, nor any incompatible provisions. Both may well stand together, and both would be enforced according to the usual construction of statutes in pari materia. It is true, that a partof the title of the act is; to repeal that 9th section of the former. This is easily accounted for. The act, as first reported by the Committee, probably contained a repealing clause—which was stricken out by the more zealous majority—the original title remaining unchanged.

But suppose that only the law of 1829, is now in force. What is to be its effect? All the laws, usages, and customs of the Cherokees are abrogated, and severe punishments denounced against those who shall presume to act under them. Their Government is dissolved—their political existence is at an end—their nation is destroyed—it is resolved into its original elements! We know that their lands are not holden by individual ownership; the title is in the nation. To annihilate the tribe, therefore, as a political community, is to destroy the owner; and the State is then to take the whole by her claim of succession.

By this statute; no Cherokee or descendant of a Cherokee can be a witness against any white man, who does not reside within the "nation." This devotes their property to the cupidity of their neighbours; it leaves them exposed to every outrage, which lawless passions can inflict. Even robbery and murder may be committed with impunity, at noonday, if not in the presence of such whites, as will become prosecutors or witnesses.

This, the gentleman from Georgia asserts, creates no new disability; that Indians are not competent to testify, by the common law, either in England or in this country. That I deny. They are good witnesses in both; and have been so, without question, ever since the case of the Gentoo, in the time of Lord Mansfield. Several were recently admitted by the Courts of New York, in a very important question of title to real estate near the falls of Niagara; and I have myself seen a person, convicted of larceny, to a large amount, in the Supreme Court of Massachusetts, upon the testimony of an Indian.

But the gentleman assigned, as a reason for his assertion, that a belief in a future state of rewards and punishments, was essential to their admissibility as witnesses. True, Sir, and so it is with respect to all others. The objection is as valid against a white as a red man. If this act creates no new disability, why was it passed? Why not leave them to the provisions of the common law? But, Sir, we learn from an intelligent Missionary, that there are a thousand members of Christian Churches.—These, and all other true believers are excluded. Even those who are so distinguished for their knowledge, integrity and ability, that the Honorable Chairman would be willing himself, to be represented by them, in the Congress of the United States, are not permitted to testify in a court of justice.

Under these enactments, the Cherokees are aliens—in their native land: trespassers—upon their own soil: outlaws—in the bosom of their own nation!

But why should I dwell upon the laws already passed, when the same power can, at will, produce others to effectuate their avowed determination. Who will pretend that the Indians can live under the legislation of the State? The Head of the Bureau of Indian Affairs, in a communication transmitted to Congress by the Secretary of War, declares that it will "seal their destruction, as admitted by their Chiefs;" and the Hon. Chairman has frankly declared in this debate, that it will reduce them to the last degree of wretchedness;—his words were—"you can-"not make a full blooded Indian more miserable" than by such subjection; and, in his written opinion of 1824, he emphatically says, if "the "protection of the United States is withdrawn," "the Cherokee Nation "cannot exist twelve months."

The question now proposed, by this amendment, is, shall that protection be withdrawn; and the Indians be compelled to leave their country under the penalty of certain destruction, if they remain?

The interrogatory has been often repeated, why should not Georgia extend her laws over the natives as well as other States?

Again, Sir, I reply—our treaties—our treaties. The Indians object, and the United States have solemnly promised to interpose at their request. In no other instances have they opposed State legislation, and demanded our interposition. This is a sufficient answer.

But this topic has been so much urged, and the effort has been so great to find shelter under the precedents of other States, that I will bestow upon them a moment's attention. That principally relied upon, and the only one specified, is a law of New York passed four or five years ago. The occasion was this. In one of the little reduced tribes, within that State, a female had been executed as a witch. The executioner was indicted in the State Court before one Judge and convicted. The question of jurisdiction was carried to the superior court, who never come to a decision, but advised a pardoning act; whereupon this law was passed, which punishes certain high crimes committed within the tribe. Its sole object was the protection of the Indians, and it seems to have been by their consent. They have never objected, much less claimed our interposition? Does this bear any analogy to the case of Georgia and the Cherokees? When another tribe, the Oneidas, formed a constitution of Government similar to that of the Cherokees, did New York interfere to destroy it and dissolve the nation? Far otherwise, they protected them in its enjoyment. And such has been the general character of the legislation of other States. I shall not go back to the early days of colonial vassalage, although it is surprising that so little colour of precedent is to be found, even when the weakness of infancy was struggling for existence against the power of the savages. I speak of the States, since they became such, under the Confederation, or the Federal Constitution; and say that their general legislation has been—not over the Indians, and acting upon the individuals within the territory of their tribe; but protecting and preserving them as a distinct community—operating upon the whites and restraining them from inflicting wrongs and injuries. The legislation of Georgia has

thrown over them a net, which binds every limb in fetters; but is no shield of defence against assaults; whilst that of other States has erected around them a wall of defence guarding them against encroachments.

This bill, Mr. President, provides for the removal of the Indians to distant regions, beyond the Mississippi; and it is proposed to place no less than half a million of dollars in the hands of the Secretary of War for that purpose. The amendment, now under consideration, declares that they shall be protected, in the enjoyment of their rights, until they shall choose to remove. The necessity for such a provision is apparent. Without it, they have no option. Without it, this bill will add to the pressure of the torrent that is sweeping them away.

Is it not known that Acts for holding Indian treaties have been used as instruments of coercion? When our commissioners have met the chiefs in council to obtain further acquisitions of territory, have they not sometimes asked only what will you *reserve?* And when the answer has been, we have no lands to spare--we will cede nothing; the question is repeated--what will you reserve ?--Congress have passed a law for the purpose of obtaining a portion of your soil--the United States are strong--their arms now sleep in peace—beware how you arouse them from their slumbers!

Not only has terror been inspired, but other means have been resorted to, to cause the women to influence their husbands; the children to beseech their parents; the warriors to urge the chiefs; until their firmness is overcome. It is related of a venerable chief, that yielding at last to this irresistible pressure, he signed the fatal parchment in tears--declaring at the time that it was the death warrant of his nation.

Apprehending that our object is to obtain further cessions, the Indians have met us in council with fear and trembling. In one instance, five or six tribes being assembled, our commissioners announced to them that our only desire was to establish and preserve peace among themselves; that we asked for no lands :--they instantly rent the air with acclamations of joy. No difficulties, no delays intervened--the treaties were accomplished at once.

Is it uncharitable to suppose that agents, to be appointed under the direction of those who are now concerned in our Indian affairs, may resort to force or terror?

Sir, the officer now at the head of the Indian bureau, in his official report of a treaty of cession, made by him with the Creeks, states the fact, that in two successive councils he met only a firm denial; and in the third, he says, one individual being most prominent in his opposition, it was not until he "broke him upon the spot" that the treaty was obtained! Yes, sir, that officer avows that he "broke" one of the prominent chiefs in their own council, as the only means of accomplishing his purposes!

And in an official communication sent to us by the Secretary of War at the commencement of this session, the same officer recommends that the government should send an "armed force" to the Cherokee country, to further the objects of this bill—the removal of the natives. He says indeed, that he would make a solemn declaration that the military were not to be used to compel them to leave their country; but only to give security to those that were willing to go. And would such a de-

claration, even if made, do away the effect of the presence of our bayonets? What is the avowed purpose? To protect, against their own government and people, the individuals who may choose to emigrate; but not to afford any aid or countenance to those that may choose to remain. The chiefs may inquire—will these soldiers give us protection against the power of Georgia, if she shall attempt to force her laws upon us? The reply must be, Oh no—the PRESIDENT *has decided that she has a right to govern you;* and if you should resist, the United States are bound to assist her in the execution of her laws against all opposition. When the British minister remonstrated against the Emperor Alexander's annexing a part of Poland to his dominions, he replied—I have three hundred thousand soldiers in that country. The argument was conclusive. If the Cherokees should hesitate; they might, in significant silence, be pointed to our glittering bayonets!

It is recommended to send an armed force to enable the Cherokees to deliberate freely!

When the Roman orator appeared in defence of Milo; he found the forum surrounded by an armed force, accompanied no doubt by the *declaration* that it was only to preserve tranquillity. But even the tongue of Cicero was palsied by the formidable array, and his friend and client was abandoned to his fate. We know, Sir, how the deliberations of the Parliament of Great Britain, and the National Conventions of France, have been aided by the presence of an armed force; and history abounds with similar examples.

I confess, Sir, that I cannot but indulge fears of the use which may be made by the War Department, of the half of million of dollars, to be appropriated by this bill. We do know, that, in making Indian treaties, there have been instances of valuable reservations of lands, and large sums of money, being secretly given to individual Chiefs, by confidential arrangements, to induce them to yield to our wishes and betray the confidence reposed in them by their nation. Is it uncharitable to apprehend that such things may happen under the directions of the present Secretary of War?

Toward that high officer I have no feeling of unkindness. I seek no imputation upon his motives; but his official acts Iam bound, by the duties of my station, to examine. Look at the instructions given by him in May last, to General Carroll who was sent as an agent of the Government to induce the Cherokees to a removal. They express throughout much solicitude for the welfare of the Indians, and profess to consult their best interests. But I am constrained to look at the acts to be done—the course of conduct prescribed. He is directed not to meet the Cherokees in "general Council" for "the consequence would be, what it has been, a "firm refusal to acquiesce;" but to "appeal to the Chiefs and influen- "tial men—*not together, but apart* at their own houses; and to make "*offers to them of extensive reservations in fee simple and other rewards*" to obtain "their acquiescence." He is further told—the more *careful* "you are *to secure from even the Chiefs the official character* you bear "the better"—and again "Go to them *not as a negotiator*, but *friend.*" "Open to each a view of his danger"—again, "enlarge on their compar- "ative degradation as a people and the total impossibility of their ever "attaining to *higher privilcges* while they retain their present relations

"to a people who seek to get rid of them"—that their laws "will be su-
"perceded and trodden under foot." Again—"enlarge upon the *ad-*
"*vantage of their condition in the West*—there the General Government
"*would* protect them—*improve them by instruction.*" They would be-
come *our equals* in privileges civil and religious, and that "by refu-
"sing", to remove "they must, necessarily, entail destruction upon
"their race."

I cannot but remark the parallel, between the course here prescribed and that which expelled our first parents from Paradise.

When the Arch Tempter sought their removal, he assailed them "*not together;*" lest their joint "*council*" should have baffled his arts; but found the feebler woman "*apart*" from her husband, deprived of the aid of her natural adviser—and *carefully concealing his* "*official character*"—of Satanic majesty; assuming the guise of a "*friend;*" a kind instructor; he told her pursue the course which I advise, and the evils which have been predicted shall not follow!—"ye shall not surely "die"—but you shall be *enlightened and elevated*—"your eyes shall "be opened and ye shall be as gods knowing good and evil." She listened and yielded—

> "Earth felt the wound, and nature from her seat
> "Sighing through all her works gave signs of woe
> "That all was lost."

She was then made the instrument of seducing the man also—And both were driven from the garden of Eden, where their Creator had placed them, to the unsubdued wilderness of the world—and a flaming sword forever barred their return.

The adoption of such measures is, in the language of the military Secretary to "move upon them in the line of their prejudices" And upon whom is it that we thus move? Those whom we have most solemnly promised to protect as faithful guardians; whom we have called brothers; whom we have taught to look up to the President, as their great father. Yes, we have endeavored to obtain over them the influence of a parent; but do we perform toward them the duties of that sacred relation?

It is said that we *must* resort to such measures; they are unavoidable. The plea of state necessity is advanced. And is this great country, with peace in all its borders, now controlled by an irresistible power, that knows no rule and consults no law? Does this measure wear the garb of *state necessity?* That, Sir, is a high-handed tyrant—not a smooth-tongued seducer. It is a lion, seizing its prey with open and resistless strength—not a serpent winding its sinuous way in secret to its victim.

Without the adoption of this amendment, the Cherokees have no choice, but between the miseries of emigration, and destruction where they are. It is contended that it is for their best interest to remove. Leave that, Sir, to their own decision. Our judgment may be too much guided by our own convenience. We undertook to judge for the Seminoles in Florida. We asked for their fertile lands; they objected,

asserting that the residue would not support existence. We persisted; and found means at last to obtain a reluctant cession. They departed in the deepest sorrow from their homes of comfort and plenty, to encounter want and misery upon a barren waste. Nineteen-twentieths of the territory which we left to them, consisted of sands where no verdure quickened, and of swamps upon which human life could not be sustained. The dreary description officially given by Governor Duval can hardly be exceeded. The consequence was, what the Seminoles foresaw--want, suffering, and starvation. The government was forthwith compelled to give twenty thousand dollars for food to preserve life, and to retrocede a portion of their territory.

Whither are the Cherokees to go? What are the benefits of the change? What system has been matured for their security? What laws for their government? These questions are answered only by gilded promises in general terms; they are to become enlightened and civilized husbandmen.

They now live by the cultivation of the soil, and the mechanic arts. It is proposed to send them from their cotton fields, their farms and their gardens; to a distant and an unsubdued wilderness--to make them tillers of the earth!--to remove them from their looms, their work-shops, their printing press, their schools, and churches, near the white settlements; to frowning forests, surrounded with naked savages--that they may become enlightened and civilized! We have pledged to them our protection--and, instead of shielding them where they now are, within our reach, under our own arm, we send these natives of a southern clime to northern regions, amongst fierce and warlike barbarians And what security do we propose to them?--a new guarantee!! Who can look an Indian in the face; and say to him; we and our fathers, for more than forty years, have made to you the most solemn promises; we now violate and trample upon them all; but offer you in their stead—another guarantee!!

Will they be in no danger of attack, from the primitive inhabitants of the regions to which they emigrate? How can it be otherwise? The official documents show us the fact, that some of the few, who have already gone, were involved in conflicts with the native tribes, and compelled to a second removal.

How are they to subsist? Has not that country now, as great an Indian population, as it can sustain? What has become of the original occupants? Have we not already caused accessions to their numbers, and been compressing them more and more? Is not the consequence inevitable, that some must be stinted in the means of subsistence? Here too, we have the light of experience. By an official communication, from Governor Clark, the Superintendent of Indian affairs; we learn that the most powerful tribes, west of the Mississippi, are, every year, so distressed by famine, that many die for want of food. The scenes of their suffering are hardly exceeded by the sieges of Jerusalem, and Samaria. There might be seen the miserable mother, in all the tortures which hunger can inflict, giving her last morsel for the sustenance of her child, and then fainting, sinking, and actually dying of starvation! And the orphan?—no one can spare it food—it is put alive into the grave of the

parent, which thus closes over the quick and the dead! And this not in a solitary instance only, but repeatedly and frequently. "The living "child is often buried with the dead mother."*

Mr. President: I am aware that their white neighbors desire the absence of the Indians; and if they can find safety and subsistence beyond the Mississippi, I should rejoice exceedingly at their removal, because it would relieve the States, of their presence. I would do much to effect a consummation so devoutly to be wished. But let it be by their own free choice, unawed by fear, unseduced by bribes. Let us not compel them, by withdrawing the protection, which we have pledged. Theirs must be the pain of departure, and the hazard of the change. They are men, and have the feelings and attachments of men; and if all the ties which bind them to their country, and their homes are to be rent asunder; let it be by their own free hand. If they are to leave forever the streams, at which they have drank, and the trees under which they have reclined: if the fires are never more to be lighted up in the council house of their chiefs; and must be quenched forever upon the domestic hearth, by the tears of the inmates, who have there joined the nuptial feast, and the funeral wail: if they are to look for the last time upon the land of their birth—which drank up the blood of their fathers, shed in its defence—and is mingled with the sacred dust of children and friends—to turn their aching vision to distant regions enveloped in darkness and surrounded by dangers—let it be by their own free choice, not by the coercion of a withdrawal of the protection of our plighted faith. They can best appreciate the dangers and difficulties which beset their path. It is their fate which is impending; and it is their right to judge; while we have no warrant to falsify our promise.

It is said that their existence cannot be preserved; that it is the doom of Providence, that they must perish. So indeed, must we all; but let it be in the course of nature; not by the hand of violence. If in truth, they are now in the decrepitude of age; let us permit them to live out all their days, and die in peace; not bring down their grey hairs in blood, to a foreign grave.

I know, Sir, to what I expose myself. To feel any solicitude for the fate of the Indians may be ridiculed as false philanthropy and morbid sensibility. Others may boldly say, "their blood be upon us;" and sneer at scruples, as a weakness, unbecoming the stern character of a politician.

If, Sir, in order to become such, it be necessary to divest the mind of the principles of good faith and moral obligation; and harden the heart

**Extract from an official report of General Clark, Superintendent of Indian Affairs, dated March 1, 1826.*

"The condition of many tribes west of the Mississippi is the most pitiable that can "be imagined. During several seasons in every year they are distressed by famine, "in which many die for want of food, and, during which, the living child is often bu- "ried with the dead mother, because no one can spare it as much food as would "sustain it through its helpless infancy. This description applies to Sioux, Osages, "and many others, but I mention those because they are powerful tribes, and live "near our borders, and my official station enables me to know the exact truth. It "is in vain to talk to people in this condition about learning and religion."

against every touch of humanity ; I confess that I am not, and, by the blessing of Heaven, will never be—a politician.

Sir, we cannot wholly silence the monitor within. It may not be heard amidst the clashings of the arena; in the tempest and convulsions of political contentions : but its "still small voice" will speak to us—when we meditate alone at even tide ;—in the silent watches of the night ;—when we lie down and we rise up from a solitary pillow ;—and, in that dread hour, when—"not what we have done for ourselves, but what we have done for others" will be our joy and our strength ; when—to have secured, even to the poor and despised Indian, a spot of earth upon which to rest his aching head,—to have given him but a cup of cold water. in charity; will be a greater treasure than to have been the conquerors of kingdoms, and lived in luxury upon their spoils.